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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,642	08/01/2003	Joseph R. Habert	1966-152	2756

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EXAMINER	
HOEY, ALISSA L	
ART UNIT	**PAPER NUMBER**
3765	

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/632,642	HABERT, JOSEPH R.	
	Examiner	Art Unit	
	Alissa L. Hoey	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 October 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-19 and 21* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-19 and 21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. This is in response to amendment of 10/13/04. Claim 1 has been amended, claim 20 cancelled and new claim 21 added. Claims 1-19 and 21 have been finally rejected below with.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1-19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen (US 2004/0187193) in view of Hirano (US 5,323,545).

In regard to claim 1, Cohen provides a decorative sock including a sock body (10) having a toe end (20) and a foot opening (28) comprising a three-dimensional object (50, 52, 54 and 56). The 3-dimentional object being stuffed (46) and attached to the sock near the foot opening (figure 5). The object including a skin (42, 44) and stuffing (46) which conforms to the shape of the object when the 3-dimensional shape of the object (50, 52, 54 and 56) being primarily determined by the skin (42, 44) filled with the stuffing (46).

In regard to claim 3, Cohen teaches the object is an animal head (50, 52, 54 and 56).

In regard to claim 21, Cohen teaches a decorative sock (10) including a sock body (20) having a toe and a foot opening comprising a three dimensional object (50, 52, 54 and 56). The object being 3-dimenstional when stuffed (figure 6). The object is attached to the sock near the foot opening and the object including a pre-formed skin (42, 44) and a deformable stuffing (46) which conforms to the shape of the object. The 3-dimentional shape of the object being primarily determined by the skin (42, 44) filled with the stuffing (46).

In regard to claims 2-6, Cohen fails to teach the object taking many different forms.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have provided the stuffed object being a miniaturized toy, an animal, an electronic device or a cellular phone because Applicant has not disclosed that providing the stuffed object in the form of a miniaturized toy, an animal head, an animal, an electronic device or a cellular phone, provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the stuffed object being in any form including animal head because as long as there is a stuffed object on a sock to add to the aesthetic appeal of the sock it doesn't matter what form it takes. Therefore, it would have been an obvious matter of design choice to modify Cohen to obtain the invention as specified in claims 2-6.

However Cohen fails to teach (claims 7-19) indicia being related visually or texturally to the object. The indicia being 2-dimentional, comprising a word, a phrase, a

number, a visual illustration, a frictional character, number of illustrations, 2-dimentional drawing of the object, a word which is the common name of the object phrase that is normally associated with the object or a world that embodies an act preformed during a user or a creation of a genuine version of the object.

In regard to claim 7, 11 and 13, Hirano provides a three dimensional object attached to a sock near the foot opening (figure 9, identifiers 3-5: column 1, lines 27-37 and column 2, lines 37-62). Also provided on the sock of Hirano is indicia being related visually to the stuffed object (figure 9, identifier 5: column 3, lines 43-52). The indicia is in the form of an animal face and is formed by drawing a pattern on the sock with yarn of a different color, sewing a piece of cloth or button, or by forming protruding recesses during the knitting process (column 3, lines 43-52).

In regard to claim 7, Hirano provides indicia that is two dimensional, since yarn being sewn to a pattern on the body of the sock is a two dimensional decorative indicia (column 3, lines 43-52).

In regard to claim 11, Hirano provides indicia comprising a visual illustration, since yarn in the form of a pattern is visual illustration (column 3, lines 43-52).

In regard to claim 13, Hirano provides the indicia comprises a design since, yarn being sewn to a pattern on the body of the sock in the form of an animal face is a design (column 3, lines 43-52).

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have provided the indicia comprising a word, a phrase, a number, a fictional character, indicia visually similar to

the stuffed object, a drawing of the stuffed object, a word which is the common name of the stuffed object, a word that embodies an act performed during a use or creation of a version of the object or a phrase that is normally associated with the object because Applicant has not disclosed that providing the indicia in the form of a word, a phrase, a number, a fictional character, indicia visually similar to the stuffed object, a drawing of the stuffed object, a word which is the common name of the stuffed object, a word that embodies an act performed during a use or creation of a version of the object or a phrase that is normally associated with the object provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with indicia being in the form of an animal head because as long as the sock has indicia that in some way adds to the aesthetic appeal of the sock. Therefore, it would have been an obvious matter of design choice to modify Hirano to obtain the invention as specified in claims 8-10, 12 and 14-19.

It would have been obvious to have provided the 3-dimentional decorative sock of Cohen with the indicia matching the 3-dimentional object of Hirano, since the sock of Cohen provided with indicia matching the 3-dimentioanl object would provide a sock that not only provides a 3-diemensional design feature but provides additional aesthetic appeal with the two-dimensional indicia on the body of the sock creating an even greater appeal to the user.

Response to Arguments

4. Applicant's arguments with respect to claims 1-19 and 21 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (703) 308-6094. The examiner can normally be reached on M-F (8:00-5:30)Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

alh

GLORIA M. HALE
PRIMARY EXAMINER